APPEAL NO. 031180
JULY 2, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on April 1, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) sustained a compensable left shoulder contusion and lower back strain injury on _____; and that the claimant had disability as a result of the injury of _____, from May 20 through October 21, 2002, but not from October 22, 2002, through the date of the hearing. The claimant essentially appealed the hearing officer's determinations based on sufficiency of the evidence grounds. The appeal file does not contain a response from the respondent (carrier).

DECISION

Affirmed.

The claimant had the burden to prove that she sustained a compensable injury as defined by Section 401.011(10) and that she had disability as defined by Section 401.011(16). Conflicting evidence was presented on the disputed issues. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established.

The hearing officer was persuaded, in part, by the medical report dated October 22, 2002, in which Dr. E opined that the claimant sustained: (1) chronic low back pain; (2) acute back strain associated with the injury of _____, resolved; (3) possible carpal tunnel syndrome, nonwork-related; (4) left shoulder contusion, resolved; (5) left hip contusion, resolved; and (6) chronic left hip pain unrelated to the injuries of _____. The evidence sufficiently supports the hearing officer's determinations that the claimant sustained a left shoulder contusion and lower back strain in the course and scope of her employment on _____, and that the claimant did not sustain an injury to her left hip, neck, left or right knee, and/or left leg or right leg in the course and scope of her employment on _____. We conclude that the hearing officer's decision on the two disputed issues of compensable injury and disability is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

The claimant essentially alleges that the hearing officer did not take into account the claimant's aggravation argument and that the hearing officer did not explain her

decision on the disputed issues. The hearing officer's Statement of the Evidence paragraph specifically commented on the medical evidence to support her determinations on the disputed issues, and, although she did not use the word "aggravation," she noted in Findings of Fact Nos. 4 and 5, that the claimed conditions were not enhanced or accelerated on _____. Additionally, the hearing officer discussed, in detail, much of the evidence presented at the CCH. Further, the Statement of the Evidence paragraph contains a brief statement that even though all of the evidence presented was not discussed, it was considered. The Appeals Panel stated that the 1989 Act does not require that the Decision and Order of the hearing officer include a statement of the evidence, and that omitting some of the evidence from a statement of the evidence did not result in error. Texas Workers' Compensation Commission Appeal No. 000138, decided March 8, 2000, citing Texas Workers' Compensation Commission Appeal No. 94121, decided March 11, 1994. The failure to summarize all of the evidence in the Decision and Order does not indicate reversible error. We find no merit in the claimant's contention that the hearing officer did not take into account all of the evidence presented at the CCH. We conclude that the determinations are supported by sufficient evidence and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain, *supra*.

With regard to the claimant's assertion that the hearing officer was litigating on behalf of the carrier, we find no merit to this claim. Review of the record failed to establish that the hearing officer abused her discretion and that she did not act in accord with guiding rules and principles in addressing the issues before her. *See* Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

Additionally, the claimant supplemented her appeal with documents that were not offered at the hearing. The attached documents purport to be a letter from the designated doctor dated June 16, 2003, a medical report dated June 16, 2003, and a Report of Medical Evaluation (TWCC-69) dated June 16, 2003. Documents submitted for the first time on appeal are generally not considered unless they constitute admissible, newly discovered evidence. We conclude that these medical documents regarding maximum medical improvement that were supplemented to the claimant's appeal do not meet the requirements of newly discovered evidence necessary to warrant a remand. Having reviewed the documents, we conclude that these documents are irrelevant to the issues in dispute and that their admission on remand would not have resulted in a different decision. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Veronica Lopez-Ruberto
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Robert W. Potts
Appeals Judge